

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LODSYS, LLC,

Plaintiff,

V.

CIVIL ACTION NO. 2:11-cv-283

ADIDAS AMERICA INC.;
BBY SOLUTIONS, INC.;
BEST WESTERN INTERNATIONAL, INC.;
CVS CARMARK CORPORATION;
SAM'S WEST, INC.;
STANLEY, BLACK & DECKER, INC.;
THE CONTAINER STORE, INC.;
THE TEACHING COMPANY, LLC;
VEGAS.COM, LLC;
VITAMIN SHOPPE, INC.,

Defendants.

JOINT MOTION TO SUBSTITUTE
CVS PHARMACY, INC. FOR CVS CARMARK CORPORTION

COMES NOW plaintiff Lodsys, LLC (“Lodsys”), defendant CVS Caremark Corporation (“CVS Caremark”), and proposed substitute-defendant CVS Pharmacy, Inc. (“CVS Pharmacy”), who file this joint motion to substitute CVS Pharmacy for CVS Caremark.

Lodsys filed its Complaint for Patent Infringement in the above-captioned action (the “Complaint”) against, among other defendants, CVS Caremark on June 10, 2011. CVS Caremark’s response is currently due on September 6, 2011. CVS Caremark has recently informed Lodsys that CVS Pharmacy, rather than CVS Caremark, is the proper entity at issue in the Complaint. CVS Caremark and CVS Pharmacy are represented by the same undersigned counsel. Accordingly, Lodsys, CVS Caremark, and CVS Pharmacy respectfully request that CVS Pharmacy be substituted for CVS Caremark in the above-captioned action as follows:

(1) CVS Pharmacy shall be substituted for CVS Caremark as a named defendant in the Complaint, and all allegations against CVS Caremark shall be deemed alleged against CVS Pharmacy;

(2) CVS Pharmacy's substitution for CVS Caremark in the above-captioned action shall relate back to Lodsys's filing of the Complaint, including for purposes of any applicable statute of limitations;

(3) CVS Pharmacy, by and through its undersigned counsel, agrees to waive its right to service of the Summons and Complaint in the above-captioned action; and

(4) CVS Pharmacy's response to the Complaint shall be due within twenty-one (21) days from entry of the Order granting this Joint Motion.

Counsel for Lodsys has conferred with counsel for CVS Caremark and CVS Pharmacy regarding the relief jointly requested herein. This Joint Motion is not for purposes of delay.

Dated: September 2, 2011.

Respectfully Submitted,

By: /s/ Christopher M. Huck
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(admitted *pro hac vice*)
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**Attorneys for Defendant CVS Caremark
Corporation and CVS Pharmacy, Inc.**

CERTIFICATE OF CONFERENCE

The undersigned counsel for Lodsys and counsel for CVS Caremark and CVS Pharmacy certify that they have conferred regarding this Joint Motion and the relief jointly requested herein.

By: /s/ Christopher M. Huck
Christopher M. Huck

By: /s/ Patrick T. Weston
Patrick T. Weston

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this response was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to FED. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this 2nd day of September 2011.

By: /s/ Christopher M. Huck
Christopher M. Huck